Tiu Chee Tuan & Ors v Pentadbir Tanah dan Daerah Kuala Selangor & Ors

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO BA-24NCvC-570–04 OF 2021
TEE GEOK HOCK JC
14 OCTOBER 2021

Civil Procedure — Striking out — Originating summons — Plaintiffs filed originating summons against defendants for declaration affirming that parts of riverbed land occupied by plaintiffs had been encroached by river within the meaning of ss 49 and 382A of National Land Code and therefore had formed part of state land — Sixth defendant applied to summarily strike out plaintiffs' originating summons — Whether there were serious triable issues — National Land Code ss 49 & 382A — Rules of Court 2012 O 18 r 19(1)(a), (b) & (d)

The subject matter of the present action was a piece of land situated along Sungai Selangor known as Lot PT 821 ('the land'). Federal Oil Mills Bhd as the original owner of the land had sold the land to Plusbury Development Sdn Bhd ('the sixth defendant'). Subsequently, the sixth defendant's agent known as Goldpage Assets Sdn Bhd had charged the land to Bank Kerjasama Rakyat Malaysia Bhd. Due to the failure of the sixth defendant in repaying the loan, the land was sold by public auction to Gabungan Melur Sdn Bhd ('the fifth defendant'). The fifth defendant then issued notice of eviction to the occupiers of the land including the plaintiffs. The plaintiffs had filed originating summons against the defendants for declarations, inter alia, affirming that the parts of the riverbed land occupied by the plaintiffs had been encroached by river within the meaning of ss 49 and 382A of the National Land Code and therefore had formed part of the state land and ceased to be part of the land. The plaintiffs argued, inter alia, that: (a) the previous owners of the land had consented for them to occupy part of the land and had confirmed that a sizeable part of the land had been encroached by river; (b) Majlis Daerah Kuala Selangor ('the first defendant'), by giving its approval for 'Kebenaran Merancang' in favour of Goldpage Assets Sdn Bhd had allegedly recognised officially the river encroachment and the first defendant's collection of assessment rates from the plaintiffs; and (c) the sixth defendant had asked Federal Oil Mills Sdn Bhd to exclude 25 acres at the river bank and/or beside the river from the computation of the purchase price due to river encroachment. The sixth defendant had filed application under O 18 r 19(1)(a), (b) and/or (d) of the Rules of Court 2012 ('the ROC') to summarily strike out the plaintiffs' originating summons ('encl 17'). The grounds relied upon by the sixth defendant were: (i) the sixth defendant had assigned all its rights and interest in the land and had given a power of attorney to Goldpage

Assets Sdn Bhd and therefore the sixth defendant should not be made a party to the action; (ii) Goldpage Assets Sdn Bhd had charged the land to the bank and the bank sold the land by public auction as a result of Goldpage Assets Sdn Bhd's default in payment; and (iii) the sixth defendant no longer had any rights to the land and had no knowledge regarding the plaintiffs' allegations on permission or consent.

Held, dismissing encl 17 with costs of RM10,000 subject to allocatur:

(1) The plaintiffs had raised serious triable issues as to encroachment by river. In making this finding, the court had perused the photographs of some of the plaintiffs' houses with river water beneath the house buildings, muddy riverbed upon which the house on stilts were built, and boats at the side of the houses (see para 42).

(2) There were triable issues as to whether in the course of the negotiations and discussions with Federal Oil Mills Sdn Bhd for the sale and purchase of lands including the areas occupied by the plaintiffs, the sixth defendant had asked Federal Oil Mills Sdn Bhd to exclude 25 acres at the river bank and/or beside the river from the computation of the purchase price due to river encroachment and also whether the sixth defendant had by words or conduct recognised the plaintiffs' rights or equity to occupy the river encroachment areas of the land. If this was the case, then there were also triable issues as to whether the sixth defendant in assigning or divesting the entirety of its rights to and interest in the land to Goldpage Assets Sdn Bhd had acted in breach of any obligation vis a vis the plaintiffs' alleged equitable rights. As such, the sixth defendant was a necessary or proper party in this action in respect of parts of the plaintiffs' claims herein. In the circumstances, the sixth defendant would not be entitled to summarily strike out the plaintiffs' action here as the triable issues also involved the act and conduct of the sixth defendant and/or the plaintiffs' triable cause of action against the sixth defendant (see paras 43–44 & 60–61).

(3) The court found that the plaintiffs' case against the sixth defendant was not obviously unsustainable, nor was it clearly bound to fail. In the circumstances, the court had found that this was not a fit and proper case for summarily striking out the plaintiffs' case against the sixth defendant under O 18 r 19 of the ROC without a full trial or full hearing (see para 63).

[Bahasa Malaysia summary

Perkara utama dalam tindakan semasa adalah berkenaan dengan sebidang tanah yang terletak di sepanjang Sungai Selangor yang dikenali sebagai Lot PT 821 ('tanah tersebut'). Federal Oil Mills Bhd sebagai pemilik asal tanah tersebut telah menjualnya kepada Plusbury Development Sdn Bhd ('defendan

keenam'). Setelah itu, ejen defendan keenam dikenali sebagai Goldpage Assets Sdn Bhd telah mencagarkan tanah tersebut kepada Bank Kerjasama Rakyat Malaysia Bhd. Disebabkan kegagalan defendan keenam membayar balik pinjaman tersebut, tanah tersebut telah dijual secara lelongan awam kepada Gabungan Melur Sdn Bhd ('defendan kelima'). Defendan kelima kemudiannya mengeluarkan notis pengusiran kepada penduduk tanah tersebut termasuk plaintif-plaintif. Plaintif-plaintif telah memfailkan saman pemula terhadap defendan-defendan untuk pengisytiharan, antara lain, mengesahkan bahawa bahagian tanah dasar sungai yang diduduki oleh plaintif-plaintif merupakan tanah kautan sungai menurut maksud ss 49 dan 382A Kanun Tanah Negara dan oleh itu telah menjadi sebahagian daripada tanah negeri dan tidak lagi menjadi sebahagian daripada tanah tersebut. Plaintif-plaintif berhujah, antara lain, bahawa: (a) pemilik tanah terdahulu telah membenarkan mereka menduduki sebahagian daripada tanah tersebut dan telah mengesahkan bahawa sebahagian besar tanah tersebut telah menjadi tanah kautan sungai; (b) Majlis Daerah Kuala Selangor ('defendan pertama'), dengan memberikan kelulusannya untuk 'Kebenaran Merancang' kepada Goldpage Assets Sdn Bhd didakwa telah mengiktiraf secara rasmi kautan sungai dan kutipan kadar taksiran defendan pertama daripada plaintif-plaintif; dan (c) defendan keenam telah meminta Federal Oil Mills Sdn Bhd untuk mengecualikan 25 ekar di tebing sungai dan/atau di sebelah sungai daripada pengiraan harga pembelian akibat kautan sungai. Defendan keenam telah memfailkan permohonan di bawah A 18 k 19(1)(a), (b) dan/atau (d) Kaedah-Kaedah Mahkamah 2012 ('KKM') untuk membatalkan secara ringkas saman pemula plaintif-plaintif ('lampiran 17'). Alasan-alasan yang disandarkan oleh defendan keenam ialah: (i) defendan keenam telah menyerahkan semua hak dan kepentingannya ke atas tanah tersebut dan telah memberikan surat kuasa wakil kepada Goldpage Assets Sdn Bhd dan oleh itu defendan keenam tidak sepatutnya dijadikan pihak dalam tindakan semasa; (ii) Goldpage Assets Sdn Bhd telah mencagarkan tanah tersebut kepada bank dan bank telah menjual tanah tersebut secara lelongan awam akibat kemungkiran pembayaran Goldpage Assets Sdn Bhd; dan (iii) defendan keenam tidak lagi mempunyai apa-apa hak ke atas tanah tersebut dan tidak mempunyai pengetahuan mengenai dakwaan plaintif-plaintif mengenai kebenaran atau persetujuan.

Diputuskan, menolak lampiran 17 dengan kos sebanyak RM10,000 tertakluk kepada alokatur:

(1) Plaintif-plaintif telah membangkitkan isu serius yang boleh dibicarakan mengenai kautan sungai. Dalam membuat dapatan ini, mahkamah telah meneliti gambar-gambar beberapa rumah plaintif dengan air sungai di bawah bangunan rumah, dasar sungai berlumpur di mana rumah panggung dibina, dan bot-bot di tepi rumah (lihat perenggan 42).

(2) Terdapat isu-isu yang boleh dibicarakan berkenaan dengan sama ada

semasa rundingan dan perbincangan dengan Federal Oil Mills Sdn Bhd untuk penjualan dan pembelian tanah tersebut termasuk kawasan yang diduduki oleh plaintif-plaintif, defendan keenam telah meminta Federal Oil Mills Sdn Bhd untuk mengecualikan 25 ekar di tebing sungai dan/atau di tepi sungai daripada pengiraan harga pembelian akibat kautan sungai dan juga sama ada defendan keenam telah, melalui perkataan atau kelakuan, mengiktiraf hak atau ekuiti plaintif-plaintif untuk menduduki kawasan kautan sungai di tanah tersebut. Jika betul, maka terdapat juga isu yang boleh dibicarakan sama ada defendan keenam dalam menyerahkan atau melepaskan keseluruhan hak dan kepentingannya ke atas tanah tersebut kepada Goldpage Assets Sdn Bhd telah bertindak melanggar apa-apa kewajipan berkenaan dengan hak saksama plaintif-plaintif seperti yang dinyatakan. Oleh itu, defendan keenam adalah pihak yang perlu atau wajar dalam tindakan ini berkenaan dengan bahagian tuntutan plaintif-plaintif di sini. Dalam keadaan tersebut, defendan keenam tidak akan berhak untuk membatalkan secara ringkas tindakan plaintif-plaintif di sini kerana isu-isu yang boleh dibicarakan juga melibatkan perbuatan dan kelakuan defendan keenam dan/atau kausa tindakan yang boleh dibicarakan plaintif-plaintif terhadap defendan keenam (lihat perenggan 43–44 & 60–61).

(3) Mahkamah mendapati bahawa kes plaintif-plaintif terhadap defendan keenam bukanlah secara jelasnya tidak mampan, dan bukanlah ianya pasti akan gagal. Dalam keadaan tersebut, mahkamah mendapati bahawa ini bukanlah kes yang sesuai dan wajar untuk membatalkan secara ringkas kes plaintif-plaintif terhadap defendan keenam di bawah A 18 k 19 KKM tanpa perbicaraan penuh atau pendengaran penuh (lihat perenggan 63).]

Cases referred to

Bandar Builders Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)

Datuk Ir Che Amran Mohd Yusoff v Yayasa n Melaka & Ors [2003] MLJU 7; [2003] 1 CLJ 767, HC (refd)

Harapan Permai Sdn Bhd v Sabah Forest Industries Sdn Bhd [2011] 2 MLJ 192; [2010] 3 MLRA 37; [2011] 1 CLJ 285, CA (refd)

Metroplex Holdings Sdn Bhd v Commerce International Merchant Bankers Bhd [2013] 4 MLJ 520, CA (refd)

Zainal Abidin Hamid @ S Maniam v Kerajaan Malaysia [2009] 6 MLJ 863; [2009] 2 MLRA 626; [2009] 6 CLJ 683, CA (refd)

Legislation referred to

National Land Code ss 46(1), 49, 353, 382(a), 382A, 417(1)

Rules of Court 2012 O 18 r 19, O 18 r 19(1), (1)(a), (1)(b), (1)(c), (1)(d)

Nurul Aqilla bt Salleh (Mohaji Hazury & Ismail) for the plaintiffs.
Harikrishnan a/l Kanapathy (K Harikrishnan & Co) for the sixth defendant.

Tee Geok Hock JC:

INTRODUCTION

[1] Occupiers of lands who have the registered proprietors' permission or approval to build houses or shops on the lands or to occupy them would find it more prudent to have the permission or approval properly and professionally recorded in writing as promptly as possible, or else face uncertainties in future when the proprietorship of the lands is transferred to or devolves upon different persons or legal entities.

[2] As exemplified by the facts and circumstances of this case and issues in dispute between the parties herein, occupiers who claim to have such permission or approval of the original proprietor but have not promptly and properly recorded in writing any permission or approval would probably have to go through the risks and uncertainties of a tedious and costly litigation at some point of time.

[3] Enclosure 17 is the sixth defendant's application under O 18 r 19(1)(a), (b) and/or (d) of the Rules of Court 2012 to summarily strike out the plaintiff's originating summons herein. On 24 September 2021 this court dismissed the sixth defendant's application in encl 17 on the ground that there are triable issues including:

(a) whether the lands occupied by the plaintiffs or part thereof has formed part of a river or has been encroached by a river;

(b) whether the river or part thereof encroached by the river became state land automatically by operation of law;

(c) whether under the law the land which forms part of a river or which has been encroached by a river can be alienated by the land administrator to a private person or company or can continue to be owned by a private legal entity;

(d) whether the river land, river encroachment and lands adjoining the river including the lands occupied by the plaintiffs should be re-surveyed in order to identify and ascertain the boundary of the river and the river encroachment as recommended or suggested by the office of Menteri Besar Selangor;

(e) whether the sixth defendant (Plusbury Development Sdn Bhd) by itself or its authorised representative has admitted or acknowledged that 25 acres of lands (including those parts occupied by the plaintiffs) has been

encroached by river or has previously suggested that the 25 acres be excluded from the sale and purchase transaction and/or from the computation of the purchase price by reason of river erosion or river encroachment;

(f) whether Federal Oil Mills Bhd or the sixth defendant has ever carried out any final survey on the boundary of part of the lands encroached by river or which has formed part of the river bed in the past and, if so, what was the area or boundary of river encroachment at that time;

(g) whether the river bed or boundary of river bed or river encroachment has been acknowledged or recognised by Majlis Daerah Kuala Selangor in the planning approval given to Goldpage Assets Sdn Bhd, the company who submitted the application for planning approval in the name of the sixth defendant;

(h) whether Goldpage Assets Sdn Bhd in its correspondence or its application for planning approval has confirmed or acknowledged that part of Lot PT 821 had been encroached by river or became part of river bed and if so, the effect of such confirmation or acknowledgement on the issues between the plaintiffs and the defendants herein;

(i) whether Goldpage Assets Sdn Bhd submitted the application for planning approval as the representative of the sixth defendant Plusbury and/or with the consent or knowledge of the sixth defendant;

(j) whether Goldpage Assets Sdn Bhd has accepted or agreed with the condition stated in the planning approval that the fishing village (including the houses and shops occupied by the plaintiffs) be retained as traditional fishing village to promote tourism, and if so, what is the effect of such acceptance or agreement on the issues between the plaintiffs and the defendants herein;

(k) whether under the laws the land administrator or the Registrar of titles shall or ought to make a memorial to record on the register of title the change in land boundary when the land or part thereof has been encroached by river or has become river bed;

(l) whether the issuance of temporary occupation licences by the land office to the plaintiffs or other persons who similarly occupy the river bank areas constitutes confirmation or recognition by the relevant authority that the land areas comprised in the TOLs have formed part of the state land;

(m) whether the plaintiffs or some of them have obtained the permission or consent of Federal Oil Mills Sdn Bhd and/or the sixth defendant (Plusbury) to build the houses and shops there or to occupy the area at the river bank;

A (n) whether the plaintiffs have acquired any rights under the laws or equity to occupy the subject-lands; and

(o) whether the plaintiffs in the circumstances of the present case have any rights under the laws or equity against the fifth defendant and/or the sixth defendant.

B

It has been held by this court that the present case is not a clear and obvious case for summarily striking out the plaintiff's originating summons without a trial and that the plaintiff's originating summons is not obviously unsustainable.
C Dissatisfied with the said decision, the sixth defendant has appealed to the Court of Appeal.

BACKGROUND FACTS

D **[4]** As there are multiple parties in the present case with a rather lengthy history and background it is more appropriate to set out the brief background factual averments and affidavit evidence relating to the subject lands and the river in chronological sequence.

E **[5]** Sungai Selangor, the river from which the State of Selangor derives her name, has been in existence since time immemorial.

[6] Along part of the river bank of Sungai Selangor at the location known as Bagan Sungai Yu is a fishing village with many houses and shops. This fishing
F village is located at the river bank of Sungai Selangor very near the river mouth where Sungai Selangor meets the Straits of Malacca.

[7] Among the residents of the Bagan Sungai Yu village are the plaintiffs who, according to the plaintiffs' averments in affidavit, are fishermen and
G traders of seafoods and fishery products who have been occupying and settling at the river bank and adjacent lands since many years ago (para 8 of the plaintiff's affidavit-in-support, encl 2).

H **[8]** Federal Oil Mills Bhd was the previous registered proprietor of several hundred acres of estate land including the land parcel of area 47,931.4 square metres (approximate 12 acres) along the river Sungai Selangor at Bagan Sungai Yu location, with title described as HS(D), 280954 Lot PT 821, Pekan Pasir Penambang, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan.

I **[9]** According to the plaintiffs as averred in para 9 of the plaintiff's affidavit-in-support (encl 2):

(a) all the 18 plaintiffs herein have been residing and occupying their houses and shops at Bagan Sungai Yu for more than ten years;

(b) there was never any attempt by any previous registered proprietor to evict them;

(c) the plaintiff's buildings and premises there were built with the permission of the previous registered proprietor Federal Oil Mills Bhd;

(d) the subsequent registered proprietor Plusbury Development Sdn Bhd (sixth defendant) also gave permission for the plaintiffs to continue residing and occupying the land; and

(e) in the Master Plan Kebenaran Merancang approved by Majlis Daerah Kuala Selangor on 30 June 2010, for Plusbury Development Sdn Bhd (sixth defendant) through its developer/agent Goldpage Assets Sdn Bhd, the parts of the land occupied by the plaintiffs were confirmed and retained as tourist attraction in the form of traditional fishing village and seafood restaurants and shops and also as parts encroached by river. The Plan for Kebenaran Merancang was attached as exh 'TCL-1' to the plaintiff's affidavit-in-support (encl 2).

[10] The plaintiffs aver that since many years ago their settlement and occupation at the relevant parts of the land together with other residents have been supplied with public facilities, amenities and utilities by the various government departments and agencies including:

(a) public roads;

(b) drains;

(c) night market;

(d) Sekolah Rendah Jenis Kebangsaan Cina Khai Tee;

(e) permanent wet market and dry market for seafood trading;

(f) water supply from SYABAS (now Air Selangor);

(g) electricity supply from Tenaga Nasional Bhd;

(h) telephone lines from Telekom Malaysia; and

(i) other facilities: para 16 of plaintiff's affidavit-in-support.

(See paras 10–12 of the plaintiff's affidavit-in-support.)

[11] According to the plaintiffs, the government also set up a special committee namely Jawatankuasa Kemajuan dan Keselamatan Kampung (JKKK) Bagan Sungai Yu Baru to administer and care for the wellbeing of the villagers including the plaintiffs and subsequently established MPKK Bagan Sungai Yu for the same purpose and functions: para 13 of plaintiff's affidavit-in-support (encl 2).

[12] The plaintiffs aver that they never encountered any problem with or hindrance by or allegation of trespass from Federal Oil Mills Bhd and the subsequent registered proprietor Plusbury Development Sdn Bhd: para 14 of plaintiff's affidavit-in-support.

[13] It is averred by the plaintiffs that they paid assessment rates to the local authority Majlis Daerah Kuala Selangor every year and a majority of the village residents including the plaintiffs were also granted Temporary Occupation Licences ('TOLs') by the Land Office, Pejabat Tanah dan Daerah Kuala Selangor: para 15 of the plaintiff's affidavit-in-support.

[14] There was sale of 338 acres of oil palm estate by the Federal Oil Mills Sdn Bhd to Plusbury Development Sdn Bhd in 2005: exh 'TCL-16', the plaintiff's affidavit-in-support in encl 4, pp 48–54. Unless otherwise stated to the contrary, all references in this grounds of judgment to the pages of the cause papers relate to the PDF pages of the e-filed cause papers in the CMS2 system.

[15] The land search records show that Plusbury Development Sdn Bhd became the registered proprietor of Lot PT 821 on 30 December 2012 (exh 'TCL-11' to plaintiff's affidavit-in-support, encl 2). The plaintiffs have alleged that in the course of the sixth defendant Plusbury's negotiations and discussions in 2005 with Federal Oil Mills Sdn Bhd for the sale and purchase of lands including the areas occupied by the plaintiff, the sixth defendant Plusbury had asked Federal Oil Mills Sdn Bhd to exclude 25 acres at the river bank and/or beside the river from the computation of the purchase price due to river encroachment (see paras 59–61 of plaintiff's affidavit-in-support, encl 2).

[16] In support of their averments that the lands or significant parts of the lands occupied by the plaintiffs have been encroached by the river Sungai Selangor, the plaintiffs have attached the following photographic evidence to the plaintiff's affidavit-in-support:

(a) satellite images of the relevant part of the river, river banks, village houses including the plaintiff's house (encl 3 PDF pp 27–31 exhs 'TCL-13' and 'TCL-14' to plaintiff's affidavit-in-support);

(b) photographs in exh 'TCL-20', encl 3 PDF pp 84–90;

(c) photographs in exh 'TCL-23' in encl 3 PDF pp 106–108;

(d) photographs in exh 'TCL-28' in encl 3 PDF pp 136–140;

(e) photographs in exh 'TCL-34' in encl 3 PDF pp 169–170 (river water);

(f) photographs in exh 'TCL-38' in encl 3 PDF pp 189, 199–201 (river water);

(g) photographs in exh 'TCL-42' in encl 4 PDF pp 2–6 (boats and river water);

(h) photographs in exh 'TCL-46' in encl 4 PDF pp 25–29 (river water);

(i) photographs in exh 'TCL-52' in encl 4 PDF pp 66–68 (river water);

(j) photographs in exh 'TCL-57' in encl 4 PDF pp 89–92 (river water);

(k) photographs in exh 'TCL-64' in encl 4 PDF pp 119–121 (river water); and

(l) photographs in exh 'TCL-73' in encl 4 PDF pp 192–203 (house on water).

[17] Plusbury Development Sdn Bhd (sixth defendant) charged the lands including Lot PT 821 to Bank Kerjasama Rakyat Malaysia Bhd.

[18] After Plusbury Development Sdn Bhd (sixth defendant) defaulted in servicing or repaying the loan, Bank Rakyat in 2019 sued the sixth defendant and obtained an order of sale by public auction.

[19] On 7 January 2020 bought Lot PT 821 at the public auction at the reserved price of RM9m. Exhibit 'TCL-69' to plaintiff's affidavit-in-support, encl 4 PDF pp 139–145.

[20] The terms of the auction sale included:

> 6. PENAWAR ADALAH BERTANGGUNGJAWAB UNTUK MENGENALPASTI BUTIR-BUTIR HAK TANAH, DAN MEMASTIKAN SEGALA TANGGUNGAN SERTA BEBANAN HARTANAH ADALAH TEPAT
>
> 23. Hartanah yang berjaya dilelong adalah dipercayai dan akan dianggap sebagai diperihalkan dengan betul dan dijual tertakluk kepada semua Ismen (easement), kaveat, tenansi, tanggungan dan hak (jika ada) yang wujud di atas atau terhadapnya yang timbul untuk mentakrif ia masing-masing dan tiada kesilapan kenyataan yang salah atau deskripsi yang salah akan membatalkan penjualan dan tiada bayaran gantirugi yang akan dibuat.
>
> The Proclamation of Public Auction, 'LELONGAN AWAM', contained this note:
>
> 'NOTA : Bakal-bakal pembeli adalah dinasihatkan agar membuat carian Hakmilik secara rasmi di Pejabat Tanah dan memeriksa semua tanggungan, bebanan serta mengenal pasti dengan tepat hartanah tersebut sebelum jualan lelongan dijalankan'
>
> The English version of 'PUBLIC AUCTION' contained this note:
>
> Note : Prospective bidders are advised to conduct an official Title search at the relevant Land Office and Inspect the subject property prior to the auction sale'

LOCATION AND DESCRIPTION OF PROPERTY

The Subject property comprises vacant commercial land and bearing postal address of Lot PT No. 821, Pekan Pasir Penambang, 45000 Kuala Selangor, Selangor Darul Ehsan

[21] After having bought Lot PT 821 at the public auction and having settled the bid price, the fifth defendant (Gabungan Melur Sdn Bhd) through its solicitors Messrs Nurliny, Pannir Mannar & Co by letters dated 15 July 2020 demanded in writing that the plaintiffs vacate their premises and leave the land Lot PT 821 (exh 'TCL-2' to plaintiff's affidavit-in-support, encl 2, pp 84–106).

[22] In September 2020, the fifth defendant (Gabungan Melur Sdn Bhd) commenced a number of suits by way of Originating Summons for summary possession of Lot PT 821: exh 'TCL-3' to plaintiff's affidavit-in-support, encl 2 pp 108–169.

[23] Acting on behalf of the plaintiffs, Messrs Mohaji Hazury & Ismail by letter dated 20 October 2020 requested the Kuala Selangor Land Office and the District Officer to carry out a re-survey and rectification pursuant to s 382A of the National Land Code on the ground that as a result of river encroachment since years ago the plaintiffs' houses were situated on the bed of the river (exh 'TCL-6' to plaintiff's affidavit-in-support, encl 2 pp 180–193).

[24] By letter dated 23 October 2020, the plaintiff's solicitors also wrote to the Menteri Besar's office regarding the matter and re-survey and rectification pursuant to ss 49 and 382A of the National Land Code: see exh 'TCL-7' to plaintiff's affidavit-in-support, encl 2 pp 196–317.

[25] The Menteri Besar's Office responded by a letter dated 25 November 2020 addressed to the District Officer/Land Office, forwarding the plaintiff's solicitors' letter dated 26 October 2020 for the District Officer/Land Office to study and deal with it further based on the procedure and steps in force ('untuk penelitian pihak tuan/puan selanjutnya berdasarkan prosedur dan tatacara yang berkuat kuasa.'). The Menteri Besar's Office also asked for a copy of the District Officer/Land Office's reply or feedback to be extended to the Menteri Besar's Office (see exh 'TCL-8' to plaintiff's affidavit-in-support, encl 3, pp 2–3.

[26] Follow-up reminder and further explanations were sent by the plaintiffs' solicitors to the Menteri Besar's Office via letter dated 28 December 2020: exh 'TCL-9' to pllaintiff's affidavit-in-support, encl 3, pp 5–12.

[27] By letter dated 14 January 2021, the Menteri Besar's Office stated that as the disputes are pending before the court, the state government faced difficulty in taking the steps applied for by the plaintiffs and would let the parties resolve their disputes in the court first (see exh 'TCL-10' to plaintiff's affidavit-in-support, encl 3 pp 14–16).

[28] On 28 April 2021, the plaintiffs filed this originating summons (encl 1) praying for the following orders and/or reliefs:

(a) Satu Perintah deklarasi mengesahkan bahawa Kawasan tanah yang diduduki oleh Plaintif-Plaintif merupakan tanah kautan sungai menurut maksud Seksyen 49 dan Seksyen 382A Kanun Tanah Negara 1965 dan justeru itu kawasan tanah yang diduduki Plaintif-Plaintif tersebut bukanlah terjumlah kepada Hartanah bawah hakmilik HSD 280954 PT 821 Pekan Pasir Penambang Daerah Kuala Selangor Negeri Selangor (selepas ini dikenali sebagai 'Hartanah tersebut') tetapi Tanah Kautan Sungai yang menjadi Tanah Kerajaan Negeri iaitu Defendan ke-2 dan ke-4;

(b) Satu perintah terhadap Defendan Pertama hingga Defendan ke-4 untuk melaksanakan pengukuran semula semua tanah kautan sungai menurut maksud Seksyen 49 dan 382A Kanun Tanah Negara 1965 dan mengukur semula keluasan sebenar Hartanah HSD 280954 PT 821 tersebut [milik Defendan Ke-5] supaya ukuran terkini, baru dan tepat yang boleh menggambarkan keadaan sebenar dan terkini bentuk muka bumi kawasan perkampungan nelayan di Bagan Sungai Yu tersebut khususnya dapat membezakan tanah kautan sungai di sepanjang tepi Sungai Bagan Yu tersebut yang menjadi tanah Kerajaan Negeri Selangor menurut Seksyen 49 dan 382A Kanun Tanah Negara 1965 dan tanah HSD 280954 PT 821 tersebut;

(c) Satu perintah supaya Defendan Pertama dan Defendan ke-2 mencatatkan, merekodkan dan mengeluarkan satu memorial terhadap geran Hartanah HSD 280954 PT 821 Pekan Pasir Penambang tersebut berdasarkan pengukuran tepat, terkini dan terbaru oleh Defendan Ke-2 dan Ke-3 seperti di Perenggan (b) di atas untuk mengesahkan setakat mana tanah kautan sungai sehingga terdapat perubahan terhadap ukuran keluasan Hartanah tersebut akibat kemaraan dan kautan sungai dan mengambil tindakan sewajarnya berdasarkan Seksyen 382A Kanun Tanah Negara 1965;

(d) Satu perintah supaya Defendan Pertama dan Defendan ke-2 mencatatkan, merekodkan dan mengeluarkan satu memorial terhadap geran Hartanah HSD 280954 PT 821 Pekan Pasir Penambang tersebut khususnya bagi menentukan samada bahagian Tanah yang Diduduki oleh Plaintif-Plaintif tersebut dan/atau bahagian tanah kautan sungai di sepanjang tepi sungai Bagan Sungai Yu tersebut telah menjadi tanah Kerajaan Negeri Selangor menurut Seksyen 49 dan 382A Kanun Tanah Negara 1965;

A

(e) Satu perintah supaya Defendan Pertama dan Defendan ke-2 mencatatkan, merekodkan dan mengeluarkan satu memorial terhadap geran Hartanah HSD 280954 PT 821 Pekan Pasir Penambang tersebut menurut Seksyen 49 dan 382A Kanun Tanah Negara 1965 dan supaya memorial tersebut diletakkan ke dalam geran terkini dan/atau terbaru Hartanah tersebut dan satu geran serta pelan terkini Hartanah tersebut hendaklah dikeluarkan dan didaftarkan oleh Defendan Pertama berdasarkan ukuran yang dirujuk di Perenggan (b);

B

(f) Satu perintah supaya Defendan Pertama dan Defendan ke-2 mencatatkan, merekodkan dan mengeluarkan satu memorial terhadap geran Hartanah HSD 280954 PT 821 Pekan Pasir Penambang tersebut menurut seksyen 49 dan 382A Kanun Tanah Negara 1965 dan supaya memorial tersebut diletakkan ke dalam geran terkini dan/atau terbaru Hartanah tersebut dan satu geran serta pelan terkini Hartanah tersebut juga merangkumi jalan raya di hadapan premis/rumah setiap Plaintif-Plaintif yang dibina Kerajaan Negeri Selangor melalui Jabatan Parit dan Saliran/JKR yang menghubungkan perkampungan Bagan Sungai Yu tersebut;

C

D

(g) Deklarasi bahawa Notis Pengusiran bertarikh 15.7.2020 kepada kesemua Plaintif secara berasingan mengikut premis-premis yang dikeluarkan oleh Defendan Ke-5 melalui pos berdaftar untuk mengusir kesemua Plaintif daripada tanah yang diduduki oleh Plaintif-Plaintif adalah batal dan tidak sah;

E

(h) Deklarasi bahawa Defendan ke-6 telah mengiktiraf hak Plaintif-Plaintif dan membenarkan mereka membina premis kediaman/perniagaan di sepanjang Bagan Sungai Yu seperti disahkan dalam Kebenaran Merancang yang diluluskan oleh Majlis Daerah Kuala Selangor pada 30.6.2010 kepada Defendan ke-6 melalui Goldpage Assets Sdn Bhd bahawa 'Blok Perkampungan Nelayan Sedia Ada dikekalkan sebagai tarikan pelancongan dan Bangunan Restoran Sedia ada akan dikekalkan dan dibaikpulih;

F

G

(i) Perintah supaya Defendan ke-5 dihalang daripada menghalau atau mengambil apa-apa langkah mengusir Plaintif-Plaintif serta merobohkan bangunan milik Plaintif-Plaintif atau membuat kacau ganggu termasuk semua perkara-perkara yang boleh terjumlah kepada menghalang Plaintif-Plaintif daripada menikmati hak terhadap hartanah/lot tanah atas sungai dan kautan sungai tersebut;

H

(j) Kos guaman Plaintif-Plaintif adalah ditanggung oleh Defendan-Defendan; dan

(k) Mana-mana perintah lain atau arahan-arahan yang dianggap wajar dan suaimanfaat untuk diberikan oleh Mahkamah Yang Mulia ini.

I

[29] By encl 9, the fifth defendant (Gabungan Melur Sdn Bhd) applied under O 18 r 19 for summary striking out of the plaintiffs' Originating Summons. The fifth defendant relied on limbs (b), (c) and/or (d) of O 18

r 19(1) of the Rules of Courts 2012. In the notice of applicationhe notice of application in encl 7, the fifth defendant relied on three arguments which are summarised in para 30 below.

PARTIES' RESPECTIVE ARGUMENTS

[30] In gist the sixth defendant (Plusbury Development Sdn Bhd) has three main arguments in support of its O 18 r 19 application:

(a) the argument that sixth defendant Plusbury had assigned all its rights and interest in the land and had given a power of attorney to Goldpage Assets Sdn Bhd and therefore the sixth defendant should not be made a party to this action;

(b) the argument that Goldpage Assets Sdn Bhd had charged the land to the bank and the bank sold the land by public auction as a result of Goldpage Assets Sdn Bhd's default in payment; and

(c) the argument that the sixth defendant Plusbury no longer had any rights to the land and had no knowledge regarding the plaintiffs' allegations on permission or consent.

See the plaintiffs' grounds of application in encl 9 and the fifth defendant's written submission on encl 9 (encl 29).

[31] The plaintiffs' main arguments in this suit are:

(a) the argument that the parts of the river bed land occupied by the plaintiffs had been encroached by river within the meaning of ss 49 and 382A of the National Land Code and therefore had formed part of the state land and ceased to be part of Lot PT 821;

(b) the argument the first to fourth defendants are under a statutory duty to re-survey Lot PT 821 in accordance with ss 49 and 382A of National Land Code so that the updated, new and precise survey record depicting the current and true condition of land including the river encroachment land and Lot PT 821 and to make ancillary or consequential amendments or alterations to register of titles;

(c) the argument that the fifth defendant's notice of eviction dated 15 July 2020 issued to the plaintiffs are null and invalid;

(d) the argument that the sixth defendant (Plusbury Development Sdn Bhd) had recognised the plaintiffs' rights and allowed the plaintiffs to build residential/commercial premises along Bagan Sungai Yu as was confirmed in the Planning Approval (Kebenaran Merancang) approved by Majlis Daerah Kuala Lumpur Selangor on 30 June 2010 issued to the sixth defendant c/o Goldpage Assets Sdn Bhd that the existing fishing

village be retained as tourist attraction and the existing restaurants shall be upgraded, ie 'Blok Perkampungan Nelayan Sedia Ada dikekalkan sebagai tarikan pelancongan dan Bangunan Restoran sedia ada akan dikekalkan dan dibaikpulih';

(e) the argument that in the course of the sixth defendant Plusbury's negotiations and discussions in 2005 with Federal Oil Mills Sdn Bhd for the sale and purchase of lands including the areas occupied by the plaintiff, the sixth defendant Plusbury had asked Federal Oil Mills Sdn Bhd to exclude 25 acres at the river bank and/or beside the river from the computation of the purchase price due to river encroachment; and

(f) the argument that the fifth defendant has no right to demolish the plaintiffs' premises or evict the plaintiffs from the premises or to cause any interference with the plaintiffs' enjoyment of rights at the river bed and river encroachment areas.

(See prayers (a), (b), (f), (g), (h) and (i) of originating summons, encl 1; plaintiffs' written submission in encl 31).

[32] The specific and/or detailed aspects of the parties' submissions are dealt with at the following parts of the judgment.

LAW ON STRIKING OUT

[33] The principles of law in relation to striking out applications are clear. The authority to be followed for such applications is the case of *Bandar Builders Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 where Mohamed Dzaiddin bin Hj Abdullah SCJ (later CJ) held as follows:

> The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the Rules of the High Court are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule (per Lindley MR in *Hubbuck v Wilkinson* [1899] 1 QB 86 at p 91), and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (*Attorney-General of Duchy of Lancaster v L & NW Ry Co* [1892] 3 Ch 274 (CA)). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (*Wenlock v Moloney* [1965] 1 WLR 1238; [1965] 2 All ER 871 (CA)) ...
>
> ... It has been said that so long as the pleadings disclose some cause of action or raise some question fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleadings to be struck out (*Moore v Lawson* (1915) 31 TLR 418 (CA)); (*Wenlock v Moloney*).

[34] In the case of *Metroplex Holdings Sdn Bhd v Commerce International*

Merchant Bankers Bhd [2013] 4 MLJ 520, the Court of Appeal had held as below:

> [23] Striking out is only adopted when it is conspicuously clear that the claim is obviously unsustainable. The court must be guided by the root word 'obviously' because that word is the guiding light which shows that the claim must be plainly or evidently unsustainable in law before the claim is struck out (*Pet Far Eastern (M) Sdn Bhd v Tay Young Huat & Ors* [1999] 5 MLJ 558 (HC)). Such power should only be exercised by the court sparingly. (*Affin Bank Bhd v Eye Bee Sdn Bhd* [2005] 7 MLJ 1; *Roslan bin Abdullah v New Zealand Insurance Co Ltd* [1981] 2 MLJ 324 (FC); *Datuk Ir Che Amran bin Mohd Yusoff v Yayasan Melaka & Others* [2003] MLJU 7; *Seng Huat Hang Sdn Bhd & Ors v Chee Seng & Co Sdn Bhd* [1987] 1 MLJ 413 (HC); *Mooney & Ors v Peat, Marwick, Mitchell & Co & Anor* [1967] 1 MLJ 87 (HC); *Honan Plantations Sdn Bhd v Kerajaan Negeri Johor & Anor and another appeal* [1998] 2 MLJ 498 (CA); *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 (SC); and *S Manickam & Ors v Ismail bin Mohamad & Ors* [1997] 2 MLJ 90).
>
> [24] If the pleadings disclose some cause of action or has raised some question fit to be decided, then it is appropriate that the case should be set down for trial, no matter how slight the chances are of succeeding (*Saripah bte Manap & Ors v Emar Sdn Bhd (in dissolution) & Ors* [1998] 1 MLJ 323 (HC)). And when there are issues to be determined by way of discovery or by way of cross-examination, then the summary process of striking out is not appropriate (*Omega Holdings Bhd v Dato' Tiah Thee Kian & Ors* [2002] 6 MLJ 20).

[35] Further, in the case of *Datuk Ir Che Amran Mohd Yusoff v Yayasa n Melaka & Ors* [2003] MLJU 7; [2003] 1 CLJ 767, the court has held as below:

> It has been stated ever so often by our courts that it is only in absolutely plain and obvious cases that a plaintiff's claim or action or a party's pleadings would be struck out under any of the limbs of O 18 r 19(1): see eg, *Roslan Abdullah v New Zealand Insurance Co Ltd* [1981] 2 MLJ 324; [1981] 1 LNS 40 (FC).
>
> In the instant case, there are serious conflicts or controversies in the multifarious affidavits filled by the parties herein. I am neither bound nor prepared to resolve these conflicts or controversies at this premature affidavit stage, but would only resolve them by way of mature consideration of viva voce evidence adduced at a full hearing of the action herein: *Kantan Jaya Marine Services (Pg) Sdn Bhd v RHB Bank Bhd* [2001]2 CLJ 738; *Hii HengTuong Alphonsus v Lok Min Wah & Ors* [1995] 4 CLJ 350 (HC).

[36] It could also be said that as for limb (b), the test is the same consideration on the claim being obviously unsustainable and that for limb (d), it arises when the process of the court is not used in a bona fide manner and has been abused (see the Court of Appeal's decision in *Harapan Permai Sdn Bhd v Sabah Forest Industries Sdn Bhd* [2011] 2 MLJ 192; [2010] 3 MLRA 37; [2011] 1 CLJ 285) and the said claim must also be proven to be obviously

unsustainable (see another Court of Appeal decision of *Zainal Abidin Hamid @ S Maniam v Kerajaan Malaysia* [2009] 6 MLJ 863; [2009] 2 MLRA 626; [2009] 6 CLJ 683).

[37] At this stage of dealing with an O 18 r 19 application for summarily striking out the plaintiffs' suit, the threshold for the plaintiffs to successfully oppose the striking-out application is low, namely to show that the plaintiffs' case is not obviously unsustainable in that there is *at least one relevant issue which ought to be tried*. On the other hand, the sixth defendant/applicant's onus in an O 18 r 19 application is a heavy one, namely to prove that the *entirety* of the plaintiffs' case is obviously unsustainable or is obviously bound to fail in that there is *no relevant triable issue whatsoever*.

FINDINGS AND DECISIONS OF COURT

Issues on river encroachment and relevant sections of National Land Code

[38] The provisions of the National Land Code which have apparent relevance to the first argument and/or group of issues are reproduced below:

> 5 Interpretation
>
> In this Act, in all documents of title to alienated land, and in all leases, licences, permits, notices, agreements and other documents relating to land granted, issued or entered into by or on behalf of the State Authority (including documents existing at the commencement of this Act), unless the context otherwise requires —
>
> 'river' means any river, stream, creek or other natural watercourse, and any tributary, distributary or artificial deviation thereof; 'shoreline' means the high-water mark of ordinary spring tides;
>
> 41 *Powers of disposal of State Authority, and rights in reversion, etc.*
>
> Without prejudice to its powers and rights under any other written law for the time being in force, the State Authority shall have —
>
> (a) all the powers of disposal conferred by section 42 with respect to —
>
> (i) property vested in it under section 40;
>
> (ii) reserved land; and
>
> (iii) mining land, which powers shall be exercised in such manner and to such extent as is authorized by this Act, and not otherwise; and
>
> (b) all the rights in reversion and other similar rights conferred on it by section 46.
>
> 46 Reversion, etc., to the State Authority
>
> (1) *Without prejudice to the provisions of any other written law for the time being in force, alienated land shall revert to and vest in the State Authority in the following circumstances:*

(a) ...

(b) ...

(c) ...

(d) ...

and *any part of alienated land affected by encroachment by the sea or any river shall revert to and vest in the State Authority in accordance with section 49.*

47 Buildings to vest in State Authority on reversion, etc.

(1) On the reversion of any alienated land to the State Authority, or the determination of any lease of reserved land, or of any licence or permit issued by the State Authority with respect to any land under this Act or any previous land law, there shall, subject to subsection (3), vest in the State Authority all buildings on the land (by whomsoever erected) other than any of temporary construction and capable of removal.

(2) Subject to subsection (3), no compensation shall be payable by the State Authority in respect of any building vesting in it pursuant to this section.

(3) Subsections (1) and (2) shall have effect subject to any provision to the contrary in the document of title to the land in question or, as the case may be, the lease, licence or permit in question.

49 *Effect of advance or retreat of sea, etc.*

Where the shoreline or the bed of any river advance so as to encroach on any alienated land, the area affected by the encroachment shall thereupon cease to form part of that land, and shall become State land; but the boundaries of alienated land shall not (except in the circumstances mentioned in paragraph (ii) of the proviso to subsection 353(2)) be affected by any retreat of the shoreline or of the bed of any river.

382A Actions in relation to documents of title where alienated land becomes State land under section 49.

(1) The Land Administrator shall upon being satisfied that any alienated land or part thereof has become State land under section 49, make or cause to be made a memorial to that effect in the register document of title to the land.

(2) The Registrar shall after making a memorial under subsection (1) —

(a) notify the proprietor thereof of the making of such memorial;

(b) call for the production of the issue document of title in accordance with section 15; and

(c) make the like memorial on the issue document of title or, in the case where the whole land has become State land, destroy the subsisting issue document of title.

(3) Where the whole land has become State land upon the making of any memorial under subsection (1), the subsisting register document of title and any subsisting issue document of title which has been destroyed

pursuant to paragraph (2)(c) shall be deemed to have been cancelled and no entry shall thereafter be made therein.

Part Twenty-Four—RESURVEY OF LAND HAVING NATURAL BOUNDARIES

353 Resurvey of land alienated before commencement by reference to natural feature boundaries

(1) Where any land alienated before the commencement of this Act is expressed in the document of title thereto to extend to a boundary or boundaries consisting of any natural feature, the Director of Survey and Mapping shall, at the request of the State Director, cause the boundary or boundaries in question to be determined by right lines.

(2) Where the natural feature referred to in subsection (1) consists of the foreshore, the coastline or the sea, a river or riverbank, or any other feature the line of which is liable to alter from time to time, then, for the purposes of this section the boundary shall be taken to follow any survey traverse made for the purpose of determining the line of that feature at the time the land was alienated: Provided that —

(i) the traverse shall be disregarded to the extent, if any, necessary to take account of any advance of the shoreline, or of the bed of any river;

(ii) unless the proprietor of the land would thereby become entitled to an area substantially greater than that specified in his document of title, the traverse shall also be disregarded to the extent, if any, necessary to include within the boundaries of the land any revetment, sea wall, river wall or other structure lawfully erected by the proprietor or any predecessor in title.

(3) Where any boundary has been determined in pursuance of subsection (1), the Director of Survey and Mapping —

(a) shall cause such action to be taken as may be necessary to secure that it is demarcated on the surface of the land by boundary marks, or is capable of being ascertained therefrom;

(b) shall cause the area of the land to be recalculated;

(c) may, if he thinks fit, assign a new lot number to the land; and (d) shall cause a certified plan to be prepared for his approval showing the boundaries of the land (including the boundary or boundaries so determined), the position of the boundary marks and the area and lot number.

(4) When the plan prepared under paragraph (3)(d) has been approved by the Director of Survey and Mapping, it shall for the purposes of subsection 396(2) be deemed to be the plan approved under paragraph (1)(e) of that section.

354 Procedure (including appeal) after resurvey, and provision as to costs

(1) Where any boundary has been determined in pursuance of subsection 353(1), the State Director shall cause notice of the fact, together with a plan showing the effect of the determination, to be served on the proprietor of the land, and on any person having a registered interest therein; and any such person may, within the period of six months beginning with the date of the notice, appeal to the State Director against the determination on the ground that it is incorrect or inequitable.

(2) Any appeal under this section shall be in writing, specifying the grounds on which it is alleged that the determination is incorrect or inequitable; and the State Director, after considering the grounds so specified and holding such enquiry as he may think fit, shall either dismiss the appeal or give such direction for the re-determination of the boundary, and with respect to matters consequential thereon, as he may consider necessary or just.

(3) At the end of the period referred to in subsection (1) or, where any appeal is made during that period, so soon as it has been disposed of and any re-determination of the boundary effected, the State Director shall notify the Registrar or, in the case of land held under Land Office title, the Land Administrator; and the Registrar or Land Administrator, on being so notified, shall issue title in continuation to the land (in conformity with any determination or re-determination of boundaries under this Part) as if he were issuing title in continuation to land as a whole.

(4) The costs of determining any boundary under section 353 or this section shall be defrayed by the State Authority; and no fees shall be charged by the State Authority in connection with any appeal under this section or any action taken thereunder by the Registrar.

417 General authority of the Court

(1) The Court or a Judge may by order direct the Registrar or any Land Administrator to do all such things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to land, and it shall be the duty of the Registrar or Land Administrator to comply with the order forthwith.

[39] From the abovementioned provisions of the National Land Code, the following legal propositions seem to appear:

(a) any part of alternated land affected by encroachment by the sea or any river shall revert to and vest in the state authority in accordance with s 49 of the National Land Code: s 46(1) of the National Land Code;

(b) where the shoreline or the bed of any river advances so as to encroach on any alienated land, the area affected by the encroachment *shall thereupon* cease to form part of that land, and shall become state land: s 49 of National Land Code;

(c) re-survey of land having natural boundary is provided for in s 353 of the National Land Code;

(d) where alienated land or path thereof has become State land due to encroachment by sea or river, the land administrator's role is to make or cause to be made a memorial to that effect in the register document of title to the land: s 382(a) of the National Land Code; and

(e) the court may by order direct the register or any land administrator to do all things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to the land: s 417(1) of the National Land Code.

[40] The questions whether an alienated land or part thereof has been encroached by river, and if so, the boundary or extent of encroachment by river, are questions of fact in each particular case.

[41] In our present case, the plaintiff have produced the following documents and matters in support of their contention that Lot PT 821 or part thereof occupied by the plaintiffs has been encroached by the river Sungai Selangor:

(a) satellite images of the relevant part of the river, river banks, village houses including the plaintiff's house (encl 3 PDF pp 27–31 exhs 'TCL-13 and TCL-14' to plaintiff's affidavit-in-support);

(b) photographs in exh 'TCL-20', encl 3 PDF pp 84–90;

(c) photographs in exh 'TCL-23' in encl 3 PDF pp 106–108 (PDF p 108 shows a house/shop built on stilts in muddy riverside ground, and it is triable issue of fact whether this is part of the river bed or river encroachment area);

(d) photographs in exh 'TCL-28' in encl 3 PDF pp 136–140 (PDF pp 138–140 show a seafood restaurant built on stilts in muddy riverside ground, and it is triable issue of fact whether this is part of the river bed or river encroachment area);

(e) photographs in exh 'TCL-34' in encl 3 PDF pp 169–170 (PDF p 170 shows a structure built on stilts in riverside ground which appears to be submerged in water , and it is triable issue of fact whether this is part of the river bed or river encroachment area);

(f) photographs in exh 'TCL-38' in encl 3 PDF pp 189, 199– 201 170 (PDF p 200 shows house/shop built on stilts in) riverside ground which appears to be submerged in water, and it is triable issue of fact whether this is part of the river bed or river encroachment area);

(g) photographs in exh 'TCL-42' in encl 4 PDF pp 2–6 (PDF p 3 shows houses and/or shops built on stilts in muddy riverside ground and also boats adjacent to the houses and/or shops, and it is triable issue of fact

whether this is part of the river bed or river encroachment area; PDF p 6 shows a house/shop built on stilts in riverside ground which appears to be submerged in water , and it is triable issue of fact whether this is part of the river bed or river encroachment area);

(h) photographs in exh 'TCL-46' in encl 4 PDF pp 25–29 (river water);

(i) photographs in exh 'TCL-52' in encl 4 PDF pp 66–68 (PDF pp 67–68 show a seafood restaurant built on stilts in muddy riverside ground, and it is triable issue of fact whether this is part of the river bed or river encroachment area);

(j) photographs in exh 'TCL-57' in encl 4 PDF pp 89–92 (PDF pp 91–92 show a seafood restaurant built on stilts in what appears to be muddy riverside ground or partly above river water, and it is triable issue of fact whether this is part of the river bed or river encroachment area);

(k) photographs in exh 'TCL-64' in encl 4 PDF pp 119–121 (PDF p 120 shows a seafood restaurant built on stilts in muddy riverside ground, and it is triable issue of fact whether this is part of the river bed or river encroachment area);

(l) photographs in exh 'TCL-73' in encl 4 PDF pp 192–203 (PDF pp 193–203 show many houses and/or shops built on stilts in riverside ground submerged in river water and also boats adjacent to the houses and/or shops, and it is triable issue of fact whether this is part of the river bed or river encroachment area);

(m) alleged recognition and/or confirmation by the previous owners Federal Oil Mills Bhd and the sixth defendant (Plusbury Development Sdn Bhd) that a sizeable part of the lands had been encroached by river: paras 9, 59–63 of the plaintiffs' affidavit-in-support (encl 2) and exhs 'TCL-1' and 'TCL-16' thereto including the exchanges of letters and sale and purchase negotiations between Federal Oil Mills Bhd and the sixth defendant (Plusbury Development Sdn Bhd);

(n) alleged admission and/or confirmation by Goldpage Assets Sdn Bhd on behalf of the sixth defendant (Plusbury Development Sdn Bhd) vide the Kebenaran Merancang that the land occupied by the riverfront occupiers (including the plaintiffs) had been encroached by river: paras 9, 67–75 of the plaintiffs' affidavit-in-support (encl 2) and exh 'TCL-1' thereto;

(o) Majlis Daerah Kuala Selangor (the first defendant), by giving its approval for Kebenaran Merancang in favour of Goldpage Assets Sdn Bhd with confirmation of retention of the village houses including the plaintiffs' houses and restaurants and shops as traditional fishing village, had allegedly recognised officially the river encroachment and also the

Majlis Daerah's collection of assessment rates from the plaintiffs: para 15 of the plaintiffs' affidavit-in-support (encl 2); para 79 of the plaintiffs' affidavit in reply (encl 11);

(p) PTD's issuance of TOLs to plaintiffs which, according to the plaintifs' contention, would constitute recognition that the lands comprised in the TOLs had reverted to and vested in the state authority: para 183 of the plaintiffs' affidavit-in-support (encl 2) and exh 'TCL-68' thereto, paras 48–49 of the plaintiffs' affidavit in reply and exh 'TCL-4' thereto (encl 11); and

(q) the fifth defendant's application to LUAS for approval to build a jetty at the riverside land is argued by the plaintiffs as the fifth defendant's recognition that the riverside land had reverted to the state authority: paras 81–85 the plaintiffs' affidavit-in-support (encl 2) and exh 'TCL-21' thereto.

[42] It is the finding of this court at this stage that the plaintiff's in our present case has raised serious triable issues as to encroachment by river. In making this finding on the existence of serious triable issues as to encroachment by river, this court has perused and considered all of the documents listed in para 41 above, of particular attention include photographs of some of the plaintiffs' houses with river water beneath the house buildings, muddy river bed upon which the house on stilts were built, boats at the side of the houses: see paragraphs in items (5)–(9) of paras 16 and 41 above.

[43] There are triable issues as to whether the sixth defendant Plusbury had in the course of the sixth defendant Plusbury's negotiations and discussions in 2005 with Federal Oil Mills Sdn Bhd for the sale and purchase of lands including the areas occupied by the plaintiff, the sixth defendant Plusbury had asked Federal Oil Mills Sdn Bhd to exclude 25 acres at the river bank and/or beside the river from the computation of the purchase price due to river encroachment and also whether the sixth defendant had by words or conduct recognised the plaintiffs' rights or equity to occupy the river encroachment areas of the land.

[44] If, as alleged by the plaintiffs, the sixth defendant had by words or conduct recognised the plaintiffs' rights or equity to occupy the river encroachment areas of the land then there are also triable issues as to whether the sixth defendant in assigning or divesting the entirety of its rights to and interest in the land to Goldpage Assets Sdn Bhd had acted in breach of any obligation vis a vis the plaintiffs' alleged equitable rights. As such, the sixth defendant Plusbury is a necessary or proper party in this action in respect of parts of the plaintiffs' claims herein.

[45] On this ground above, the sixth defendant's encl 17 application should be dismissed with costs.

Second argument and group of issues: Previous owner's permission and licence

[46] In support of their argument that the previous landowners had given them the permission and licence to build houses there and occupy there, the plaintiffs rely upon, inter alia, the following evidence:

(a) the sixth defendant (Plusbury) had assigned and/or given rights to Goldpage Assets Sdn Bhd to develop the lands including Lot PT 821: paras 9 of plaintiffs affidavit-in-support (encl 2);

(b) Goldpage Assets Sdn Bhd, on behalf of itself and Plusbury (sixth defendant), via their submission and obtaining of Kebenaran Merancang in 2010 recognised and/or confirmed that a significant parts of the lands including area occupied by the plaintiffs had been encroached by river land would therefore remain as traditional fishing village houses and shops for tourist attraction, paras 9, 54 and exh 'TCL-1' to the plaintiffs' affidavit-in-support (encl 2); and

(c) averments that to the knowledge and with the consent of the previous registered proprietors including the sixth defendant, the plaintiffs have been occupying the houses and shops for many years and it has been public knowledge that the plaintiffs' shops have been operating as seafood restaurants and seafood trading shops for many years and a tourist attraction for many years: paras 9–16 and 56–58 of the plaintiff's affidavit-in-support. (Enclosure 2); photographs of shops, houses and river and river beds: see exhs 'TCL-20' to 'TCL-73' listed in para 16 above; paras 66–75 of the plaintiff's affidavit in reply (encl 11).

[47] In the public notice for auction sale, there are among others the following terms and the conditions of sale precautionary statements:

> 6. PENAWAR ADALAH BERTANGGUNGJAWAB UNTUK MENGENALPASTI BUTIR-BUTIR HAK TANAH, DAN MEMASTIKAN SEGALA TANGGUNGAN SERTA BEBANAN HARTANAH ADALAH TEPAT
>
> 23. Hartanah yang berjaya dilelong adalah dipercayai dan akan dianggap sebagai diperihalkan dengan betul dan dijual tertakluk kepada semua Ismen (easement), kaveat, tenansi, tanggungan dan hak (jika ada) yang wujud di atas atau terhadapnya yang timbul untuk mentakrif ia masing-masing dan tiada kesilapan kenyataan yang salah atau deskripsi yang salah akan membatalkan penjualan dan tiada bayaran gantirugi yang akan dibuat.

The Proclamation of Public Auction, 'LELONGAN AWAM', contained this note:

NOTA: Bakal-bakal pembeli adalah dinasihatkan agar membuat carian Hakmilik secara rasmi di Pejabat Tanah dan memeriksa semua tanggungan, bebanan serta mengenal pasti dengan tepat hartanah tersebut sebelum jualan lelongan dijalankan

The English version of 'PUBLIC AUCTION' contained this note:

Note: Prospective bidders are advised to conduct an official Title search at the relevant Land Office and Inspect the subject property prior to the auction sale

LOCATION AND DESCRIPTION OF PROPERTY

The Subject property comprises vacant commercial land and bearing postal address of Lot PT No. 821, Pekan Pasir Penambang, 45000 Kuala Selangor, Selangor Darul Ehsan

[48] The plaintiffs argue that in the entire circumstances of the present case, they have legal and/or equitable rights and interests to continue to occupy the houses and shops notwithstanding the fifth defendant/Melor's purchase of Lot PT 821 at the auction sale. The question whether or not the plaintiffs or some of them have any legal and/or equitable rights and interests to continue to occupy the houses and shops in the circumstances of the present case is a mixed question of fact and law which involves triable issues of fact, and it cannot be summarily disposed of in an O 18 r 19 application. As the plaintiffs' alleged legal and/or equitable rights and interests to continue to occupy the houses and shops in the circumstances of the present case are said to be obtained during the times of the previous proprietors Federal Oil Mills Sdn Bhd and the sixth defendant (Plusbury) and the plaintiffs have also allege that the said legal and/or equitable rights and interests to continue to occupy the houses and shops continued despite the sale or divestment of proprietorship by the sixth defendant to Goldpage Assets Sdn Bhd and subsequently to the fifth defendant (fifth Defendant), the sixth defendant (Plusbury) is in the circumstances a necessary or proper party in the present case.

[49] In light of the evidence adduced in our present case, this court finds that there are, inter alia, serious triable issues as to:

(a) whether or not the plaintiffs or some of them in fact had any permission or consent of the previous owner Federal Oil Mills Bhd to build the shops and houses at the subject-land and/or to occupy the shops and houses;

(b) whether or not the sixth defendant (Plusbury Development Sdn Bhd) in the course of their negotiations with Federal Oil Mills Bhd had knowledge of the plaintiffs' permission and/or consent from Federal Oil Mills Bhd and/or had by words or conduct recognised the plaintiff's rights or equitable interests (if any) in continuing to occupy the said houses and shops;

(c) whether or not Goldpage Assets Sdn Bhd, on behalf of itself and Plusbury Development Sdn Bhd (sixth defendant), via their submission and obtaining of Kebenaran Merancang in 2010 had recognised and/or confirmed that a significant parts of the lands including area occupied by the plaintiffs had been encroached by river land would therefore remain as traditional fishing village houses and shops for tourist attraction and had thereby recognised the plaintiff's rights or equitable interests in continuing to occupy the said houses and shops and/or were thereby estopped from denying the plaintiff's rights or equitable interests in continuing to occupy the said houses and shops;

(d) whether the sixth defendant knew of the plaintiffs' alleged equitable rights allegedly derived from Federal Oil Mills Bhd before the sixth defendant assigned or divested the entirety of its rights to and interest in the land to Goldpage Assets Sdn Bhd; and

(e) whether the sixth defendant in assigning or divesting the entirety of its rights to and interest in the land to Goldpage Assets Sdn Bhd had acted in breach of any obligation vis a vis the plaintiffs' alleged equitable rights.

[50] As such, the sixth defendant Plusbury is a necessary or proper party in this action in respect of parts of the plaintiffs' claims herein.

[51] On this ground alone, the plaintiffs' action against the sixth defendant should not be summarily struck out under O 18 r 19 of the ROC 2012.

Third argument and group of issues:

First to fourth defendants' statutory duties arising from encroachment by river.

[52] Sections 46 and 49 of the National Land Code stipulate the legal effect of encroachment by sea or river and the reversion of the encroached portion of alienated land to the state authority.

[53] Section 382A of the National Land Code stipulates the land administrator's statutory duty and/or role in making or causing to be made a memorial to record in the registered document of title the reversion of any alienated land or part thereof to the state authority.

[54] Section 353 of the National Land Code provides for re-survey of the natural boundary of river so as to determine the right lines and thereafter to have them reflected or recorded in the register of documents of title of the affected lands.

[55] As there are serious triable factual issues as to whether or not Lot PT 821 or part thereof had been encroached by river and whether or not the houses and shops occupied by the plaintiffs or some of them are on the river bed or the river encroachment area, the questions of mixed fact and law regarding the first to fourth defendants' statutory duties under the National Land Code are also serious issues to be tried in our present case.

[56] Among the factors and circumstances relied upon by the plaintiffs to argue that the first to fourth defendants had statutory duties regarding re-survey on the river encroachment boundary are the alleged acknowledgement or recognition by the sixth defendant, whether by itself or through its authorised representative Goldpage Assets Sdn Bhd that 25 acres of the estate land there had been encroached by river and that the pre-existing houses and shops (including those occupied by the plaintiffs) should be retained as a traditional fishing village for promoting tourism. As such, this issue on re-survey of river encroachment is partly dependent on and/or intertwined with triable issues of fact which also have a bearing on whether or not the sixth defendant (Plusbury) in assigning or divesting the entirety of its rights to and interest in the land to Goldpage Assets Sdn Bhd had acted in breach of any obligation visa a vis the plaintiffs' alleged equitable rights.

[57] On this ground alone, the plaintiffs' action against the sixth defendant (Plusbury) should not be summarily struck out under O 18 r 19 of the ROC 2012.

Fourth argument

Fifth defendant's notices of eviction

[58] The question whether or not the fifth defendant's notice of eviction are null or invalid depends on the following questions:

(a) whether or not the areas of land occupied by the plaintiffs has reverted to the state authority or remain as part of the alienated land in Lot PT 821 — this is a question of mixed fact and law which in turn depends of many triable issues of fact; and

(b) whether or not the previous proprietors Federal Oil Mills Bhd and/or Plusbury Development Sdn Bhd (sixth defendant) gave any legal or equitable rights or interests to the plaintiffs or some of them regarding the areas occupied by them, and if so, whether or not the fifth defendant is by law or equity bound by the same in the circumstances of our present case — these are questions of mixed fact and law which in turn depends of many triable issues of fact.

[59] The questions (1) and (2) in the immediately foregoing paragraph is are triable issues.

[60] In the present case, the plaintiffs alleged that the previous proprietors Federal Oil Mills Bhd and/or Plusbury Development Sdn Bhd (sixth defendant) gave legal or equitable rights or interests to the plaintiffs or some of them regarding the areas occupied by them. If that were the case and the fifth defendant's notice of eviction were held to be valid because of the sixth defendant Plusbury's assignment or divestment of all its proprietary rights in land to Goldpage Assets Sdn Bhd and subsequently to the fifth defendant (Melor),the plaintiffs would still have triable issues vis a vis the sixth defendant Plusbury as to whether or not the sixth defendant (Plusbury) in assigning or divesting the entirety of its rights to and interest in the land to Goldpage Assets Sdn Bhd had acted in breach of any obligation vis a vis the plaintiffs' alleged equitable rights and interests.

[61] In the circumstances, the sixth defendant would not be entitled to summarily strike out the plaintiffs' action here as the triable issues also involved the act and conduct of the sixth defendant and/or the plaintiff's triable cause of action against the sixth defendant (Plusbury).

CONCLUSION

[62] In conclusion, this court has held that there are multiple relevant and serious triable issues in the present case.

[63] This court has found that the plaintiffs' case against the sixth defendant (Plusbury Development Sdn Bhd) is not obviously unsustainable, nor is it clearly bound to fail. In the circumstances, this court has found that this is not a fit and proper case for summarily striking out the plaintiffs' case against the sixth defendant under O 18 r 19 without a full trial or full hearing.

[64] In the premises, this court on 24 September 2021 dismissed the sixth defendant's encl 17 application with costs. The costs of encl 17 application were assessed at RM10,000 subject to allocatur.

Enclosure 17 dismissed with costs of RM10,000 subject to allocatur.

Reported by Dzulqarnain Ab Fatar